

DRAFT – Existing Biomass Projects

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NON-FIRM ENERGY PURCHASE AGREEMENT

This NON-FIRM ENERGY PURCHASE AGREEMENT (the “Agreement”) is made and entered into as of _____, 2001, by and between the **State of California Consumer Power and Conservation Financing Authority** (the “Power Authority”) acting solely under the authority and powers created by SBX1 6 (Chapter 10 of the Statutes of 2001, First Extraordinary Session) codified as Section 3300 *et seq.* of the Public Utilities Code (the “Act”), an agency of the State of California, and [Name], (a California corporation) (the “Seller”).

WITNESSETH:

WHEREAS, the Power Authority acquires electric generation resources in connection with its responsibilities, as set forth in the Act, and

WHEREAS, the Power Authority solicited bids for the purchase of energy; and

WHEREAS, the Power Authority has determined to accept a bid of the Seller; and

WHEREAS, because of the administrative burden and delays associated with such requirements, Seller would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements would apply to or be required to be incorporated in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

“Acquisition Price” shall have the meaning set forth in Section 10.

“Annual Delivery Period” shall have the meaning set forth in Section 2.03.

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"Availability" means the ratio of (i) the total hours in a month minus the hours that the Project, or any component thereof, was not available due to forced or scheduled outage; divided by (ii) the total hours in the month. Availability records of each generating unit as well as for the Project as a whole shall be recorded and maintained by the Seller.

"Authorized Representative" shall mean the person or persons designated in Appendix C as having full authority to act on behalf of a party for all purposes hereof.

"Billing Address" means the billing address specified in Appendix C or as otherwise specified by the Power Authority.

"Business Day" means any day other than a Saturday or Sunday or a holiday observed by Federal Reserve member banks in New York City.

"CAISO" shall mean the California Independent System Operator.

"Commercial Operation Date" or "COD" shall be the date on which Seller confirms in writing to Power Authority that the conditions set forth in Section 2.06 have been met. The expected Commercial Operation Date is set forth in Appendix A.

"Contract Capacity" shall mean the total installed nameplate capacity of the Project as stated in Appendix A.

"Costs" shall have the meaning set forth in Section 6.03 hereof.

"Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Delivery Point" means the point of interconnection of the Seller's facilities with the CAISO-controlled transmission grid, as specified in Appendix A.

"Event of Default" shall have the meaning set forth in Section 6.01 hereof.

"Guarantee Agreement" means an agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for specific obligations under this Agreement.

"Guarantor" means the entity providing a guarantee pursuant to a Guarantee Agreement.

"Invoice Month" means the calendar month after the delivery of Non-Firm Energy for which an invoice is being issued.

"Investment Grade" means with respect to the Seller a rating on the Seller's senior long-term unsecured debt obligations of "Baa3" from Moody's and "BBB-" from S&P.

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“Letter of Credit” means an irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Power Authority.

“Market Quotation Average Price” shall mean the average of the good faith quotations solicited from not less than five (5) Reference Market-makers disregarding the highest and lowest quotations. If quotations cannot be obtained from five Reference Market-makers, the Market Quotation Price shall be the average of all quotations received.

“Market Value” shall have the meaning set forth in Section 6.03 hereof.

“Master Power Purchase Agreement” means that certain power purchase agreement between the Power Authority and the California Department of Water Resources that sets forth the terms and conditions for the sale and purchase of power between those parties.

“Moody’s” means Moody’s Investor’s Services, Inc., or its successor.

“NERC” shall mean the North American Electric Reliability Council or any successor organization.

“Non-Defaulting Party” shall have the meaning set forth in Section 6.01 hereof.

“Non-Firm Energy” means all scheduled energy from the Project, to be delivered to the Power Authority at the Delivery Point. The annual average amount of Non-Firm Energy estimated to be delivered is set forth in Appendix A.

“Payment Sub-schedule” means the schedule of payments to be made by the California Department of Water Resources to the Power Authority under terms of the Master Power Purchase Agreement for delivery of Non-Firm Energy to the Delivery Point by Seller.

“Per Unit Market Price” means the applicable price per megawatt-hour determined in accordance with Section 6.03.

“Present Value Discount Rate” shall have the meaning set forth in Section 6.03 hereof.

“Project” means the Seller’s [] megawatt biomass fueled generation plant located at [street address] together with all other improvements, easements, permits, agreements and other rights benefiting the power generating plant, and all electric transmission facilities from the generating plant to the point of interconnection with the interconnecting utility, as further described in Appendix D to this Agreement.

“Prudent Industry Practices” means those practices, methods and procedures as modified from time to time, that are currently and commonly used in the electric power industry to design, engineer, select, construct, operate and maintain electric power facilities and equipment dependably, reliably, safely, efficiently, and economically, with due regard to the state-of-the-art

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in the electric power industry, as applied in the Western Systems Coordinating Council (WSCC) area.

"Purchase Price" means the price set forth in Appendix A.

"Reference Market-maker" means any marketer, trader or seller of or dealer in Non-Firm Energy products whose long-term unsecured senior debt is rated Investment Grade.

"Replacement Contract" means a contract having a term, transaction quantity, availability rate, delivery rate, Delivery Point and product configuration substantially similar to the remaining Term, transaction quantity, delivery rate, Delivery Point and product configuration of this Agreement[based on historical production from the project.

"Replacement Price" means the price at which Power Authority, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Non-Firm Energy not delivered by Seller hereunder, plus (i) costs reasonably incurred by Power Authority in purchasing such substitute Non-Firm Energy and (ii) additional transmission or other charges, if any, reasonably incurred by Power Authority to the Delivery Point, or at Power Authority's option, the market price at the Delivery Point for such Non-Firm Energy not delivered as determined by Power Authority in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Power Authority be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For purposes of this definition, Power Authority shall be considered to have purchased replacement Non-Firm Energy to the extent Power Authority shall have entered into one or more arrangements in a commercially reasonable manner whereby Power Authority repurchases Seller's unfulfilled obligation to sell and deliver the Non-Firm Energy from another party at the Delivery Point.

"Sale Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Non-Firm Energy not received by Power Authority, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Non-Firm Energy and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Non-Firm Energy to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Non-Firm Energy not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Power Authority's liability. For purposes of this definition, Seller shall be considered to have resold such Non-Firm Energy to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller makes an alternate sale of the Non-Firm Energy to a third party at the Delivery Point.

"Schedule Coordination Services" shall mean all services rendered by registered CAISO Schedule Coordinators that are necessary in order for electric power resources to be scheduled and delivered over the CAISO transmission grid in accordance with the CAISO Tariff.

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"S&P" means Standard & Poor's Ratings Agencies (a division of McGraw-Hill, Inc.), or its successor.

"State" means the State of California.

"Term" shall have the meaning set forth in Section 2.05.

"Termination Payment" shall have the meaning set forth in Section 6.02 hereof.

"Uncontrollable Force" shall have the meaning set forth in Section 5.01 hereof.

ARTICLE II PURCHASE AND SALE OF NON-FIRM ENERGY

Section 2.01. Purchase and Sale of Non-Firm Energy. Seller shall sell and deliver, or cause to be sold and delivered, and the Power Authority shall purchase and receive, or cause to be purchased and received, the Non-Firm Energy at the Delivery Point, beginning on the Commercial Operation Date and continuing for the Term set in Appendix A to this Agreement, and for which the Power Authority shall pay the Seller the Purchase Price. Seller shall be obligated to schedule to the Power Authority and to generate the Non-Firm Energy at the Project's maximum capability available in each hour, not to exceed 105% of Contract Capacity, and to operate the Project such that monthly actual generation is within plus or minus 10% of monthly scheduled generation. In no event may Seller curtail delivery for economic reasons. The Seller shall be responsible for any costs or charges imposed on or associated with the Non-Firm Energy up to the Delivery Point. The Power Authority shall be responsible for any costs or charges imposed on or associated with the Non-Firm Energy or its receipt at and from the Delivery Point. In addition, Seller shall sell and deliver and Power Authority shall purchase and receive any energy produced by the Project prior to the Commercial Operation Date, upon reasonable notice by Seller and according to the terms of this Agreement. In no event shall the Seller have the right to procure electric energy from sources other than the Project for sale and delivery pursuant to this Agreement.

Section 2.02. Transmission and Scheduling. The Seller shall arrange and be responsible for transmission service to the Delivery Point, and shall obtain Schedule Coordination Services necessary to deliver the Non-Firm Energy to the Delivery Point. Seller shall be responsible for all CAISO costs and charges, including imbalance charges due to deviations from power schedules. The Power Authority shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule with its transmission providers to receive the Non-Firm Energy at the Delivery Point. All deliveries shall be scheduled in accordance with CAISO requirements to fulfill contractual metering and interconnecting requirements set forth in the CAISO tariff and the implementing CAISO standards and requirements, including but not

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limited to, executing a standard form CAISO Participating Generator Agreement, so as to be able to deliver Non-Firm Energy to the Delivery Point, which is on the CAISO-controlled transmission grid. The Seller shall be responsible for ensuring that Non-Firm Energy deliveries are scheduled consistent with the most recent rules adopted by the applicable NERC regional reliability council, or its successor. Risks of transmission curtailment or interruptions shall be the responsibility of the Seller up to the Delivery Point. Scheduling of Non-Firm Energy delivery will be performed pursuant to Appendix A.

Section 2.03 Energy Production Forecasts. No later than the Commercial Operation Date, Seller shall deliver to the Power Authority its forecast of the amount of Non-Firm Energy it expects to deliver each day of the period commencing on the Commercial Operation Date and ending on the next succeeding April 30. No later than April 1 of each year during the term of this Agreement, Seller shall deliver to the Power Authority its forecast of the amount of Non-Firm Energy it expects to deliver each day of the twelve (12) month period (“Annual Delivery Period”) commencing on the next succeeding May 1 (adjusted for any remaining term of this Agreement of less than twelve (12) months). No later than the first day of each calendar month, Seller shall deliver to the Power Authority its forecast of the amount of Non-Firm Energy it expects to deliver each hour of each day of such calendar month. No later than noon on the Tuesday before each week consisting of the Sunday immediately succeeding such Tuesday at 12:00 P.M. midnight, Pacific time, to the following Saturday at 11:59 P.M., Pacific time, Seller shall deliver to the Power Authority its update of the amount of Non-Firm Energy it expects to deliver to the Power Authority for each hour of each day of such week.

Section 2.04. Limited Recourse. Recourse against the Authority under this Agreement is limited solely to amounts payable to the Authority pursuant to the Payment Sub-schedule. This Agreement shall not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, other than the Authority, or a pledge of the faith and credit of the State or of any political subdivision, but shall be payable solely from the funds provided therefore in this Agreement. This Agreement shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefore or to make any appropriation for any payment under the Agreement.

Section 2.05. Term. The term of this Agreement (the “Term”) shall be as set forth in Appendix A. This Agreement shall terminate upon expiration of the term specified in Appendix A.

Section 2.06 Commercial Operation. The Commercial Operation Date shall be the date upon which Seller first certifies in writing to the Power Authority that all of the following conditions have been satisfied:

- (a) The Seller has completed a four-hour demonstration test, at its expense, of the Project that achieves a Net Demonstrated Capacity (“NDC”) of no less than 95% of the Contract Capacity. The Parties shall agree on the timing and procedures for such demonstration test, and Seller shall provide

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Department with access to the Project to monitor the test with detailed written results. Either Party may request a re-test, at its expense.

- (b) Seller has received all necessary approvals, licenses, permits and emission reduction credits (if applicable) for operating the Project at its maximum capacity for all hours in each Annual Delivery Period (prorated on a daily basis in the event of a partial Annual Delivery Period) for the term of the Agreement, except for final permits which Seller reasonably expects to obtain in the normal course and which are not required for Seller to fulfill its obligations pursuant to the Agreement.
- (c) Seller has submitted to Power Authority a copy of the Project's System Impact Study ("SIS") and, if performed, Detailed Facility Study ("DFS") or Expedited Facilities Study ("EFS") prepared by or on behalf of the interconnecting utility, and the SIS and DFS or EFS demonstrate that the ability of the Project to operate during the contract hours will not be subject to extraordinary curtailment protocols utilized to manage flows over congested transmission lines or paths during normal system operating conditions (no lines, transformers, or critical generators out of service due to planned or forced outages) or critical system outage conditions (one critical generating unit out of service due to a planned or forced outage), or other transmission-related protocols, schema or procedures that otherwise will significantly restrict Seller's capability to perform its obligations under this Agreement.
- (d) Seller has demonstrated that it has secured firm commitments for adequate supplies and transportation of fuel.

Section 2.07 Operation and Maintenance. Seller shall operate and maintain the Project according to Prudent Industry Practices. Seller may perform scheduled maintenance of the Project for up to 40 days per 12 month period. Seller shall coordinate scheduled maintenance outages of the Project with the Power Authority, and shall use best efforts to allow 30 days notice of such outages. In no event may major scheduled outages of the Project occur during the months of June through October, inclusive.

Section 2.08. Other Provisions. The additional terms contained in Appendix A are hereby incorporated by reference into this Agreement.

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ARTICLE III REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties of the Power Authority. The Power Authority makes the following representations and warranties:

(a) Pursuant to the Act, the Power Authority is authorized and empowered to enter into the transactions contemplated by this Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, the Power Authority has duly authorized the execution and delivery of this Agreement.

(b) The execution, delivery and performance by the Power Authority of this Agreement and the consummation by the Power Authority of the transactions herein contemplated have been duly authorized and will not violate any provision of law in any material respect, or any order or judgment of any court or agency of government having jurisdiction thereover, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any material indenture, material agreement or other material instrument to which the Power Authority is a party or by which it or any of its property is subject to or bound.

(c) This Agreement constitutes the legal, valid and binding obligation of the Power Authority enforceable against the Power Authority in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3.02. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller is a corporation or other such legal entity duly organized, validly existing and in good standing under the laws of the state in which it was formed or incorporated, is duly qualified to do business in and is in good standing under the laws of the State, is not in violation of any provision of its articles of incorporation or by-laws, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement. The Seller is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Seller herein contemplated have been duly authorized by all material requisite action on the part of the Seller and will not violate any provision of law, any order or judgment of any court or agency of government, or the certificate of incorporation or by-laws of

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the Seller, or any material indenture, agreement or other instrument to which the Seller is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument.

(c) This Agreement constitutes the legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) There is no substantive action or proceeding pending or, to the best knowledge of the Seller, threatened by or against the Seller by or before any court or administrative agency that might adversely affect the ability of the Seller to perform its obligations under this Agreement and all material authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Seller as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Seller hereunder have been obtained.

(e) The Seller is solvent. No action has been instituted, with respect to the Seller, by the Seller or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights nor has any petition been presented or instituted for its winding-up or liquidation.

ARTICLE IV PAYMENTS

Section 4.01. Billing Period; Billing Address. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to the Power Authority shall be sent to the Billing Address.

Section 4.02. Payments. Payments for amounts billed hereunder shall be made so that such payments are received by the Seller on or before the last Business Day of the Invoice Month or the 10th day after receipt of the bill, whichever is later. Payment shall be made at the location designated by the Seller to which payment is due. Payment shall be considered received when the Power Authority mails payment. If the due date falls on a non-Business Day of either the Power Authority or the Seller, then the payment shall be due on the next following Business Day.

Section 4.03 Late Payments. Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with Government Code Section 927.6(6) not to exceed 15% annual rate, pro-rated based on the actual days of late payment.

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Section 4.04 Disputes. In case any portion of any bill is in dispute, the disputed amount will be placed into an interest bearing escrow account. Any excess amount of bills which, through errors or as a result of a dispute, have been overpaid shall be returned by the Seller upon determination of the correct amount, with interest accrued at the rate provided in Section 4.03 hereof, prorated by days from the date of overpayment to the date of refund. Neither the Power Authority nor the Seller shall have rights to dispute the accuracy of any bill or payment after a period of two (2) years from the date on which the first bill was delivered, except in cases of fraud or deliberate over billing, in which case the period shall be restricted only by law.

Section 4.05. Records Retention and Audit.

(a) Records Retention. The Power Authority and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of three (3) years after final payment under this Agreement. Within three (3) years from final payment under this Agreement, any party to any transaction may request in writing copies of the records of the other party to the extent reasonably necessary to verify the accuracy of any statement or charge. The party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(b) Audit. Seller agrees that the Power Authority, the Power Authority of General Services, the Bureau of State Audits, or their designated representatives, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Seller agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Seller agrees to include similar right of the State to audit records and interview staff in any contractors or suppliers related to performance of this Agreement.

ARTICLE V UNCONTROLLABLE FORCES

Section 5.01. Uncontrollable Forces. No party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means any cause beyond the control of the party affected, including but not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute not specific to the Project, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority which by exercise of due diligence such party could not

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reasonably have been expected to avoid and to the extent which by exercise of due diligence it has been unable to overcome. No party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice. Notwithstanding the foregoing, an Uncontrollable Force shall not be based on (i) the loss of the Power Authority's markets; (ii) the Power Authority's inability economically to use or resell the Non-Firm Energy purchased hereunder; (iii) the loss or failure of Seller's supplies including, but not limited to, Seller's own generating assets or contracts for the purchase of power or energy; or (iv) Seller's ability to sell the Non-Firm Energy at a price greater than the Purchase Price.

The Power Authority shall not be relieved by operation of this Section 5.01 of any liability to pay for power delivered to the Power Authority by the Seller or to make payments then due or which the Power Authority is obligated to make with respect to performance that occurred prior to the Uncontrollable Force.

Seller shall not be relieved by operation of this Section 5.01 of any of Seller's liabilities under this Agreement that may result from a failure of Seller to deliver power pursuant to a then-current schedule including, without limitation, CAISO imbalance energy costs.

ARTICLE VI EVENTS OF DEFAULT

Section 6.01. Events of Default. An "Event of Default" shall mean with respect to a party ("Defaulting Party"):

- (a) The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within thirty (30) Business Days after written notice of such failure is given to the Defaulting Party by the other party (the "Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by certified mail to the Authorized Representative specified in Appendix C for the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or
- (b) The failure by the Defaulting Party to provide clear and good title as required by Section 10.01, to have made accurate representations and warranties as required by Sections 3.01 or 3.02 or to perform any other material covenant or obligation hereunder and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party. The Non-Defaulting Party shall provide the notice by certified mail to the designated contact person for the Defaulting

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Party and also shall send the notice by overnight delivery to such Authorized Representative; or

- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights, or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-Defaulting Party under the Agreement pursuant to Section 7.01 of this Agreement, or
- (e) The Defaulting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Defaulting Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party.

Section 6.02. Remedies for Events of Default. (a) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate this Agreement upon written notice (by certified mail or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. The payment associated with termination ("Termination Payment") shall be the aggregate of the Market Value and Costs calculated in accordance with Section 6.03. Subject to the provisions of Section 6.02 (b) hereof, the Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for a termination hereunder. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(b) Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party.

Section 6.03. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) Market Value shall be (i) in the case the Power Authority is the Non-Defaulting Party, the present value, calculated using a discounted cash flow model, of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case the Seller is the Non-Defaulting Party, the present value, calculated using a discounted cash flow model, of the positive difference, if any, of (A) payments under

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this Agreement, and (B) payments under a Replacement Contract (if any) based on the Per Unit Market Price, in each case using the Present Value Discount Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Discount Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches, as closely as possible, the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

(b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts, any or all of the settlement prices on other established power exchanges and other bona fide third party offers; provided, however, that if there is no actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (c).

(c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).

(d) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements pursuant to which the Non-Defaulting Party has hedged its obligations or entering into new arrangements which replace this Agreement, transmission and ancillary service costs caused by the termination of this Agreement incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the termination of this Agreement. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.

(e) In no event, however, shall a party's Market Value or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

(f) The Non-Defaulting Party shall use reasonable efforts to mitigate the amount of the Termination Payment, including, to the extent practicable, the mitigation or elimination of the Costs.

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If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 8.01 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within one hundred eighty (180) Business Days of receipt of written notice payable to an escrow account administered by an entity mutually agreed by the Parties subject to refunding as determined subsequently. Allocation of the costs for escrow services or interest earnings from the escrow account shall be determined from the dispute resolution process as provided in Article VIII.

Section 6.04 Early Termination. Early termination rights as contained in Appendix A may be exercised pursuant to this section. In the event of early termination under this Section 6.04, neither Party shall be liable to the other for the payment of any damages related to such early termination, including, but not limited to, the Termination Payment. In the event of such early termination, the Parties shall be mutually released from all rights and obligations, except for those rights and obligations that specifically survive such termination as set forth elsewhere herein.

ARTICLE VII CREDITWORTHINESS

Section 7.01. Creditworthiness. Should Seller's creditworthiness, financial responsibility, or performance viability become unsatisfactory to the Power Authority in the Power Authority's reasonably exercised discretion, the Power Authority may require the Seller to provide, at the Seller's option (but subject to the Power Authority's acceptance based upon reasonably exercised discretion), either (i) the posting of a Letter of Credit, (ii) a cash prepayment, (iii) the posting of other acceptable collateral or security by the Seller, (iv) a Guarantee Agreement executed by a creditworthy entity; or (v) some other mutually agreeable method of satisfying the Power Authority. The Seller's obligations under this Section 7.01 shall be in an amount sufficient to cover (1) in case the remaining Term is less than one year, 100% of the Termination Payment, or (2) in case the remaining Term is one year or more, 25% of the Termination Payment, in each case calculated as if Article VI applied. Events which may trigger the Power Authority questioning the Seller's creditworthiness, financial responsibility, or performance viability pursuant to the above include, but are not limited to, the following:

- (A) The Power Authority has knowledge that the Seller (or its Guarantor, if applicable) is failing to perform or defaulting under other contracts.
- (B) The Seller or its Guarantor has long-term senior lien debt which is rated as Investment Grade and that debt falls below the Investment Grade rating by S&P or Moody's or is below Investment Grade and the rating of that debt is downgraded further by S&P or Moody's.
- (C) Other substantial adverse changes in the Seller's financial condition occur.

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- (D) Substantial changes in market prices or other events occur which, in the sole judgment of the Power Authority, materially and adversely impact the Seller's ability to perform under this Agreement.

If the Seller fails to provide such reasonably satisfactory assurances of its ability to perform a transaction hereunder within ten (10) Business Days of demand therefor, that may be considered an Event of Default under Section 6.01 of this Agreement and the Power Authority shall have the right to exercise any of the remedies provided for under Article VI. Nothing contained in this Section 7.01 shall affect any credit agreement or arrangement, if any, between the parties.

ARTICLE VIII DISPUTE RESOLUTION

Section 8.01. Dispute Resolution. If the parties are unable to resolve a dispute with respect to this Agreement, either party may send a notice to the other requesting a meeting at which senior officers or officials of the parties will attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the meeting notice is received by the party to whom it is directed, either party may demand that the matter be submitted to a single neutral arbitrator with substantial relevant experience in the power industry. If the parties are unable to agree upon an arbitrator within ten (10) days of the demand, the arbitrator shall be appointed pursuant to California Code of Civil Procedures and the party applying for the appointment of the arbitrator shall request that the appointment be made on an expedited basis. Within ten (10) days of the appointment of the arbitrator, the party demanding arbitration shall submit to the arbitrator a reasonably detailed description of its position together with supporting material. Within a further ten (10) days, the other party shall respond by submitting to the arbitrator a reasonably detailed statement of its position together with supporting material. Each party shall at the same time as such submission deliver copies of its submission to the other party and shall promptly provide any additional explanation or information requested by the arbitrator. The arbitrator shall be instructed to use all reasonable efforts to render a written decision setting forth its findings and conclusions within thirty (30) days of the date on which the arbitration proceedings are concluded. The arbitrator's decision concerning the item or items in dispute shall be final and binding on the parties. The parties shall bear their own costs and share the arbitrator's expenses equally.

ARTICLE IX REMEDIES FOR FAILURE TO DELIVER/RECEIVE

Section 9.01. Power Authority Failure. If Power Authority fails to schedule receipt and/or receive all or part of the Non-Firm Energy and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, then Power Authority shall pay Seller, within ten (10) Business Days of invoice receipt, an amount for all such megawatt-hours of deficiency

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equal to the positive difference, if any, obtained by subtracting the Sales Price from the Purchase Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

Section 9.02. Seller Failure. If Seller fails to schedule delivery and /or deliver all or part of the Non-Firm Energy and such failure is not excused under the terms of this Agreement or by the Power Authority's failure to perform, Power Authority's remedy shall be through the calculation of monthly Availability and the use of early termination pursuant to Appendix A, as applicable.

ARTICLE X PURCHASE OPTION

Section 10.01 Purchase or Renewal Option: At the expiration of the Term of this Agreement, the Power Authority may select one of the following purchase and renewal options with regard to the Project:

1. "Fair Market Value Purchase Option": The right to purchase the Project from the Seller for a price equal to the lesser of (i) the "Fair Market Value of the Project" as determined in this accordance with the provisions of this paragraph, and (ii) \$[] (the "Acquisition Price"). In order to exercise the Fair Market Value Purchase Option referred to in this paragraph, the Power Authority must first deliver a written notice of interest in such exercise to the Seller on or before the first day of the final year of the Term of this Agreement. The "Fair Market Value of the Project" will then be determined as follows: Within 60 days after the delivery by the Power Authority to the Seller of the written notice of the exercise by the Power Authority of the Fair Market Value Purchase Option, the Power Authority and the Seller shall each select an appraiser with expertise in preparing appraisals of the fair market value of facilities comparable to the Project to prepare within 60 days a written appraisal of the fair market value of the Project. In the event the difference between the appraisal prepared by the appraiser selected by the Power Authority and the appraisal prepared by the appraiser selected by the Seller is less than 10%, the "Fair Market Value of the Project" shall be an amount equal to the sum of the appraisal prepared by the appraiser selected by the Power Authority and the appraisal prepared by appraiser selected by the Seller divided by two. If the difference between such two appraisals is equal to or greater than 10%, then the appraiser selected by the Power Authority and the appraiser selected by the Seller shall select a third appraiser with expertise in preparing appraisals of the fair market value of facilities comparable to the Project to prepare within 60 days an appraisal of the fair market value of the Project and the appraisal prepared by such third appraiser shall be binding and conclusive upon both the Power Authority and the Seller as being the "Fair Market Value of the Project" for purposes of this paragraph. The Power Authority shall pay all of the fees and expenses of the appraiser selected by the

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Power Authority, and the Seller shall pay all of the fees and expenses of the appraiser selected by the Seller. The fees and expenses of the third appraiser, if any, shall be borne in equal shares by the Power Authority and the Seller. In the event the Power Authority exercises the Fair Market Purchase Option in accordance with the provisions of this paragraph, on such date on or prior to the expiration of the Term of this Agreement as shall be mutually agreed upon by the Power Authority and the Seller, the Power Authority shall deliver the Acquisition Price to the Seller and the Seller shall transfer title to the Project, including good and marketable title to the real estate or leased property on which the Project is located, together with easements of ingress to and egress from the Project, and title to all components of equipment and other personal property comprising the Project, to the Power Authority, free and clear of all liens and encumbrances. The Seller shall make all commercially reasonable efforts to secure extension or renewal of all permits, approvals, entitlements, land leases and equipment leases required to allow the Project to continue to operate following the exercise by the Power Authority of the Fair Market Purchase Option and the transfer of title to the Project from the Seller to the Power Authority. The Fair Market Purchase Option may be exercised by the Power Authority only to the extent permitted by applicable law at the time of such exercise. The Power Authority shall have the right, in its sole discretion and without the consent of the Seller, to assign the Fair Market Purchase Option provided for in this paragraph to any department or agency of the State of California or to any political subdivision of the State of California or to any public agency, public authority, public corporation or other governmental entity created under and pursuant to the laws of the State of California.

2. “Contract Renewal Option”: Not later than the first day of the sixth month prior to the expiration of the initial term of this Agreement, and on the same date of each year thereafter to and including the tenth year, the Power Authority shall have the right to extend the term of this Agreement for an additional period of one year under the same terms and conditions as contained herein, including, but not limited to, those provisions relating to Guaranteed Availability Factor. The Seller shall make all commercially reasonable efforts to secure extension or renewal of all permits, approvals, entitlements, land leases and equipment leases required to allow the Project to continue to operate during each one-year extension of the term of this Agreement.

The Contract Renewal Option may be exercised by the Power Authority only to the extent permitted by applicable law at the time of such exercise.

[Section 10.02 placeholder for tax ownership language]

[Section 10.03 placeholder for buyout procedure provisions]

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ARTICLE XI MISCELLANEOUS

Section 11.01. Title, Risk of Loss. The Seller warrants that it will transfer to the Power Authority good title to the Non-Firm Energy sold under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point and that Seller's sale is in compliance with all applicable laws and regulations. **THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Risk of loss of the Non-Firm Energy shall pass from the Seller to the Power Authority at the Delivery Point(s).

Section 11.02. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, without regard to the conflicts of laws rules thereof.

Section 11.03. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Sacramento, State of California.

Section 11.04 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement. The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 11.05. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Power Authority and the Seller.

Section 11.06. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 11.07. Taxes. The Purchase Price shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Power Authority for if the Power Authority has paid, all taxes applicable to the Non-Firm Energy that arise prior to the Delivery Point. If the Power Authority is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Power Authority is liable for and shall pay, cause to be paid, or reimburse the Seller

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for if the Seller has paid, all taxes applicable to the Non-Firm Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Power Authority. Either Party, upon written request of the other party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Non-Firm Energy.

Section 11.08. Transfer of Interest in Agreement. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of the Project whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

Anything herein to the contrary notwithstanding, the Power Authority may transfer and assign this Agreement to any entity created or designated by law for such purpose and the Power Authority shall have no further obligations hereunder; provided, however, that all right, title and interest in the Fund shall be transferred to such entity without any encumbrance for the benefit of all persons selling power or energy to the Power Authority, including the Seller. The Power Authority may also pledge and assign this Agreement to a bond trustee as collateral for bonds issued by the Power Authority and may also transfer or assign this Agreement to any electrical corporation, as defined in the Act, whose long-term unsecured senior debt is rated Baa3 or better by Moody's and BBB- or better by S&P.

Section 11.09. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 11.10. Relationship of the Parties. (a) Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties. Each party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. (b) All rights of the parties are several, not joint. No party shall be under the control of or shall be deemed to control another party. Except as expressly provided in this

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Agreement, no party shall have a right or power to bind another party without its express written consent.

Section 11.11. No Dedication of Facilities. The Seller's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of the Seller to the public or to the other party and it is understood and agreed that any undertaking under this Agreement by the Seller shall cease upon the termination of the Seller's obligations under this Agreement.

Section 11.12. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate the Seller to provide any services hereunder directly to or for retail customers of any person. (b) In performing their respective obligations hereunder, neither party is acting, or is authorized to act, as agent of the other party.

Section 11.13. Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 10.08.

Section 11.14. Liability and Damages. No party or its directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder. Any liability or damages faced by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

Section 11.15. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 11.16. Notices. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the parties to the addresses set forth in Appendix C.

Section 11.17. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a party's own negligence) or otherwise, shall either party be liable to the other party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise; provided, however, that this provision shall not limit in any way a party's right to payment of the Termination Payment pursuant to Section 6.02 hereof.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the date first above written.

CALIFORNIA POWER AUTHORITY

By: _____
Name:
Title:

[NAME]

By: _____
Name
President

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Appendix A

Supplemental Definitions and Terms of Agreement

Description of Project: [to be added]

Product: Non-Firm Energy, which is intended to be supplied from the Project. Seller's failure to deliver Non-Firm Energy shall be excused: (i) if the Project is unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines); (ii) by an event or circumstance that affects the Project so as to prevent Seller from performing its obligations, and which is not within the reasonable control of, or the result of the negligence of, the Seller, (iii) by Power Authority's failure to perform, (iv) by scheduled maintenance outages of the Project. In any of such events, Seller shall not be liable to Power Authority for any damages, including any amounts determined pursuant to Article IX.

Contract Capacity [xxxxxx] kilowatts (net)

Delivery Point: At the interconnection of the Seller's facilities associated with the Generating Plant (on the high side of the Generating Plant's step-up transformer) with the CAISO controlled transmission grid. All delivered Energy shall be metered in real-time basis at the interconnected substation. A copy of such meter information shall be included in each monthly invoice. All meters and equipment used for the measurement of Energy shall be provided, owned, maintained, inspected, tested, and read pursuant to CAISO requirements. .

Contract Price: During the Delivery Period: \$[xx]/MWh.

The Seller shall be responsible for all charges with respect to uninstructed energy as applied to this Agreement by the CAISO, all as further provided under the caption "Scheduling" herein.

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Expected COD [month][day],[year]

Monthly Availability 85% June-October

Guarantee Percentage: 75% January – May and November-December

Seller shall not provide Replacement Energy to avoid a reduction in Availability.

Emissions: Seller shall obtain all plant permits and emission offsets needed to operate the Project for up to 8760 hours per year at Contract Capacity, shall operate the Project pursuant to the permits, and shall maintain the validity of the permits.

Scheduling:

Seller shall be the designated Scheduling Coordinator (as defined in the CAISO tariff) for the Project and shall be responsible for scheduling the forecast of Non-Firm Energy to the Delivery Point during the Delivery Period. Seller shall submit schedules and any updates to such schedules to the CAISO based on the most current forecast of Non-Firm Energy consistent with all scheduling protocols of the CAISO. All generation scheduling and transmission services shall be performed in accordance with all applicable operating policies, criteria, guidelines and tariff of CAISO or its successor, and any other generally accepted operational requirements. Seller shall also fulfill contractual, metering and interconnection requirements set forth in the CAISO tariff and implementing CAISO standards and requirements, including but not limited to executing a CAISO Participating Generator Agreement, so as to be able to deliver energy to the Delivery Point. In the event that CAISO modifies or amends its scheduling protocols in the future, Seller hereby agrees to adhere to such changes to scheduling procedures with Power Authority so as to effect the changes necessary and any economic benefit from such changes shall inure solely for the benefit of Power Authority.

No later than four (4) hours before Seller's Scheduling Coordinator is required to submit its preferred day-ahead energy schedule to CAISO, Seller shall deliver to the Power Authority its preferred day-ahead schedule and, thereafter, Seller shall immediately deliver to the Power Authority notice of any changes to such preferred day-ahead schedule and the reason(s) therefor. Notwithstanding anything to the contrary herein, in the event Seller makes a same-day change to its schedule for any reason (other than an adjustment imposed by CAISO) which results in an increase to its output (whether in part or in whole), the Power Authority shall have the right, but not the obligation, to take delivery of such energy and to pay for such increase in output at the purchase price per MWh set forth above, which right must be exercised no later than one (1) hour prior to the

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deadline for the Power Authority, in its capacity as a Scheduling Coordinator, to submit hour-ahead schedules to CAISO, otherwise such right shall be deemed not to have been exercised and the Power Authority shall have neither the right nor the obligation to take delivery of such energy.

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Operating Procedures: Prior to the Commercial Operation Date and from time to time as reasonably determined necessary by the Parties, the Parties shall agree upon written operating procedures (“Operating Procedures”) addressing how the Parties will perform their respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Scheduled Maintenance Outage reporting; (4) procedures for daily capacity level and Non-Firm Energy reporting; (5) procedures for record keeping; and (6) scheduling procedures; provided that the failure to agree on Operating Procedures will not relieve the Parties of their respective obligations under this Agreement.

Seller shall operate and maintain, and arrange Scheduled Maintenance Outages for, the Project in accordance with Prudent Industry Practices. Scheduled Maintenance Outages shall not occur during the months of June through October, unless otherwise agreed to by Power Authority.

Curtailments: If notified by the CAISO or any interconnecting utility to curtail deliveries, or if deliveries are otherwise curtailed by the CAISO or the interconnecting utility, the Power Authority shall not have any financial obligation to Seller for any damages or lost revenues, and such event would not constitute an Uncontrollable Force.

Term From the date of execution of this Agreement by the Power Authority through and including the 3rd anniversary of the COD.

Early Termination: The Power Authority shall have the option to terminate the Power Purchase Agreement if:

1. The output from the Project yields an Availability that is less than the Monthly Availability Guarantee Percentage for three consecutive months; or

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2. Seller has not been granted regulatory authority from all applicable permitting authorities by ____ [Date]
3. Seller has not provided notice of achievement of Commercial Operations by [Date]__

Upon exercising such right by Power Authority, the term Project as referred to in this Agreement shall not include such portion of the Project that has been terminated by the Power Authority. This early termination would not be considered a Default on behalf of the Power Authority under the terms of this Agreement.

Credit Standards: Parties agree that the security provisions set forth below shall be in place by the Commercial Operation Date:

1. Credit rating of unsecured long-term debt for Seller, or an affiliate that provides a guarantee, of BBB or better from Standard & Poor's or Baa or better from Moody's Investors Service or
2. Security for Seller's performance obligations in the form of (i) a mortgage on and security interest in the facility, (ii) collateral assignment of contracts for support services, transmission rights, permits and related rights, (iii) a right to receive notices of default from secured lenders and from parties to the assigned contracts, (iv) a right to step in and cure defaults of developer to lender, and (v) if rights under clause (iv) are exercised, a right to step in and operate the Project. If there is a senior lender that already has a mortgage on and security interest in the Project, Power Authority will accept a second mortgage and security interest will prohibit Power Authority from taking any action to foreclose on the collateral until the senior lender has been paid in full. Subordination provisions must be reasonably satisfactory to the senior lender or
3. A guaranty to Power Authority, in a form acceptable to Power Authority, from a corporate parent that satisfies the credit criteria described in part 1.

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Appendix B Milestone Dates

Major Milestone Activity	Expected Milestone Completion Date	Critical Milestone Completion Date
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Appendix C

Addresses

SELLER

Billing Address:

$$\begin{bmatrix} \\ \\ \\ \end{bmatrix}$$

POWER AUTHORITY

Billing Address:

California Power Authority

901 P Street

Sacramento, CA 958xx

Attn: Executive Manager Power Systems

Notice Address:

$$\begin{bmatrix} \\ \\ \\ \end{bmatrix}$$

Notice Address:

California Power Authority

901 P Street

Sacramento, CA 958xx

Attn: Executive Manager Power Systems

Authorized Representative:

Authorized Representative:

Title

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Appendix D

Project Description